## DRAFT

### **SCHOOL CHOICE**

## LOCAL EDUCATION AGENCY GUIDANCE

(Adapted for Idaho from U.S. Department of Education non regulatory Guidance on School Choice)

Idaho Department of Education June 2004

#### Public School Choice in Idaho Guidance

#### A. GENERAL INFORMATION

## A-1. Which accredited schools (traditional and charter) and local educational agencies (school district or some charter schools) are required to offer public school choice?

According to federal law and State Board of Education rules, students who are enrolled in an accredited traditional or charter public school are eligible to transfer to another school if their school has been identified as in:

- (1) school improvement;
- (2) corrective action; or
- (3) restructuring.

(For the definitions of these terms, please see Appendix A.)

Choice related transportation is an allowable expense under the state's pupil transportation program. LEAs and charter schools may apply for 85 percent reimbursement. Schools receiving Title I funds may use these federal funds to pay for the nonreimbursable transportation costs necessary for students to attend their new schools, subject to the limitations discussed in item J-3.

## A-2. May an existing choice program, such as an open enrollment program, be modified to accommodate the school choice requirement?

Idaho Code section 33-1402 establishes open enrollment between school districts and within school districts governed by local policies. The school improvement choice provisions required by State Board of Education rule and federal law and regulation can be accommodated within, and can become a meaningful part of, an open enrollment program, provided that the state and federal requirements are met, including the requirement for LEAs and LEA charter schools, to give parents timely notice of their choice options, to provide students who change schools with transportation to their new school, and to provide where necessary priority ranking for access to resources.

### A-3. What choice options are available to Idaho students?

The choice options vary slightly between schools that receive Title I funds and those that do not.

### **Schools receiving Title I funds**

LEAs and LEA charter schools must give all students attending schools that have not made adequate yearly progress (AYP) for two years and have been identified for

improvement the choice to attend another public school that is not in school improvement. Choice must be offered for the duration of the time the school is identified for improvement.

If the LEA or LEA charter school is not able to provide choice for pupils in a school in its first year of improvement because no optional schools are available or practicable, it may offer eligible parents the option of supplemental education services for their child. Eligibility for these services is determined by federal rules and guidelines. Eligible parents may choose either choice or supplemental services for their child but not both.

#### **Schools without Title I funds**

LEAs and LEA charter schools must give all students attending schools that have not made adequate yearly progress (AYP) for two years and have been identified for improvement the choice to attend another public school that is not in school improvement. Choice must be offered for the duration of the time the school is identified for improvement.

The option of supplemental services for eligible students in lieu of transfer becomes available for non-Title I schools in the second year of school improvement and when a school reaches corrective action status. Eligible parents may choose either choice or supplemental services for their child but not both.

### **B. TIMING AND DURATION OF CHOICES**

#### B-1. For which students is an LEA or LEA charter school required to offer choice?

LEAs and LEA charter schools must ensure that schools identified for school improvement offer the opportunity to transfer to another accredited public school not in school improvement.

The stages of improvement are detailed in federal legislation and State Board of Education rules and noted below. Those stages are based upon the number of years in which a school has not made adequate yearly progress (AYP). (See Appendix A for definitions.) LEAs and LEA charter schools are required to offer choice to students enrolled in schools in the following categories:

- 1. Schools that are in their first year of school improvement.
- 2. Schools that are in the second year of school improvement.
- 3. Schools that are in corrective action.
- 4. Schools that are in restructuring (both the planning year for restructuring and any implementation years) [Federal law: Sections 1116(b)(5)(B), 1116(b)(7), and 1116(b)(8), and 34 C.F.R. Section 200.43(b)(2) & State Board of Education Administrative Rule Governing Thoroughness: 08.02.03.114.01-06.]

Under State Board of Education and federal rules, a school is identified for "school improvement" when it does not make AYP for two consecutive years. It remains in improvement, and then continues into "corrective action" and then "restructuring" statuses, until it makes AYP for two consecutive years.

### B-2. When must an LEA and LEA charter school make choice available to eligible students?

An LEA and LEA charter school must make choice available for students not later than the first day of the school year following the school year in which the LEA administered the assessments that resulted in the school being identified as in need of school improvement, corrective action, or restructuring [Federal law: Section 1116(b)(1)(E) & State Board of Education Administrative Rule Governing Thoroughness: 08.02.03.114.01-06.]

If possible, an LEA or LEA charter school should notify parents about their available choices well before the beginning of the school year in which those choices will be available.

## B-3. How should year-round schools meet the requirement to offer school choice by the beginning of the school year?

Parents of children attending these schools should be informed of their opportunity to choose another school as early as possible, and before the start of the new school year.

## B-4. What is the responsibility of the State Department of Education to ensure that public school choice is available at the start of a new school year?

According to State Board of Education Administrative Rules Governing Thoroughness 08.02.03.112 02.02.b, the State Department of Education must provide Adequate Yearly Progress determinations, as well as lists of schools identified for improvement, corrective action, and restructuring, to each LEA and LEA charter school in a timely manner so that the LEA and LEA charter school can, before the beginning of the new school year, identify those schools whose students may transfer and inform parents that they may choose a different school for their child.

# B-5. If any LEA or LEA charter school does not receive from state, prior to the start of the school year, Adequate Yearly Progress determinations or the list of schools identified for improvement, corrective action, and restructuring, when must it offer public school choice?

If an LEA or LEA charter school does not receive the information in time to offer choice before the beginning of the school year, it must make choices available as quickly as possible, so that parents can exercise choice and students can enter new schools before the school year gets well under way.

Under no circumstances should an LEA or LEA charter school wait until the next school year before providing the opportunity to transfer to eligible students. For

example, an LEA or LEA charter school that receives its listing of schools identified for improvement in the fall might offer choice to students immediately or for the second semester [Federal law: 34 C.F.R. Section 200.32(f)].

## B-6. How long must an LEA or LEA charter school continue to offer students in eligible schools the option to attend another public school?

An LEA and LEA charter school must offer choice to all students in an eligible school until the school is no longer identified for improvement, corrective action, or restructuring, i.e., until the school makes AYP for two consecutive years.

## B-7. How long must students who change schools be allowed to attend the school of their choice?

If an eligible student exercises the option to transfer to another public school, an LEA or LEA charter school must permit the student to remain in that school until he or she has completed the highest grade in the school. However, the LEA is no longer obligated to provide transportation for the student after the end of the school year in which the student's school of origin is no longer identified for school improvement, corrective action, or restructuring [Federal law: 34 CF.R. Section 200.44(g)].

In addition, the statute does not require students who change schools to remain in their new school through the highest grade of the school. To the extent feasible, those students should have the opportunity to return to the original school if their parents decide that would be in their educational interest

If an eligible student has transferred out of a school that is in school improvement status and the student's original school leaves that status after the school year has begun, the LEA or LEA charter school must allow the student to continue to attend his or her current school through the final grade of that school, but no longer is required to provide transportation. Since the school year will already be under way, however, the LEA or LEA charter school should give parents time to come up with other options rather than immediately terminating the provision of transportation. For example, it might want to continue to provide transportation until the semester break. School Board of Trustees approved policy should identify how the school district will address this issue.

# B-8. What opportunities for choice must an LEA or LEA charter school provide to a student who has changed schools under the choice provisions and whose new school is subsequently identified as in need of improvement?

Like other children enrolled in schools identified for improvement, that child must be offered the choice of attending a school that has not been so identified and, subject to the limitations described in Section J, offered the opportunity to receive transportation to such a school. Note, however, that this guidance must be read together with the guidance set forth in item B-7; if a child's original school is no longer on the state's

school improvement list, the LEA or LEA charter school is not required to provide transportation to that child. (Again, school board policy should address how this will work. Stability for the child and the district should be emphasized.)

B-9. If an eligible student changes schools but, in a subsequent year, moves out of the school attendance area for his or her original school and no longer lives in the attendance area of a school identified for improvement (but continues to live in the same school district), must the LEA or LEA charter school continue to allow that student to attend the new school and continue to provide transportation?

As with students whose original school is no longer identified as in need of improvement, students who change schools and then move out of the attendance zone served by a school in improvement status must be permitted to continue attending their new school until they have completed the highest grade in that school. However, once they move, the LEA or LEA charter school is no longer obligated to provide for transportation. Transportation obligations should be clearly addressed in the open enrollment and attendance zone policies of the school district.

### C. ELIGIBLE STUDENTS

C-1. Which students are eligible to change schools under state and federal choice provisions?

All students enrolled in public schools identified for school improvement, corrective action, or restructuring are eligible to transfer to another public school (which may be a charter school) that is not in school improvement. The only exception applies in the situations discussed in item E-12, when there are no other schools in the district (or outside the district) to which students could transfer.

C-2. What does the federal law mean when it says that the LEA or LEA charter school shall "give priority to the lowest achieving children from low-income families"?

The LEA or LEA charter school must give *all* students in a school identified for improvement the opportunity to transfer to another public school. In implementing this option to transfer, however, there may be circumstances in which the LEA or LEA charter school needs to give priority to the lowest-achieving children from low-income families *[Federal law: Section 1116(b)(1)(E)(ii)]*. For example, if not all students can attend their first choice of schools, an LEA or LEA charter school would give first priority in assigning spaces to the low-achieving low-income students.

C-4. In applying this priority, how does an LEA or LEA charter school determine which students are from low-income families?

The federal statute requires that LEAs and LEA charter schools make this determination using the same data that they use in allocating Title I funds to schools [Federal law: Section 1116(e)(12)(A)]. Schools not receiving Title I funds also may use these criteria.

# C-5. May LEAs or LEA charter schools use information from the National School Lunch Program in determining which students are from low-income families and thus may be eligible for the priority for choice?

Because the law requires LEAs and LEA charter schools, in determining which students are eligible for the priority, to use the same data they use in making Title I allocations, and because most LEAs use school lunch data in calculating those allocations, most LEAs will, in fact, have to use school lunch data in identifying students as eligible for the priority.

LEAs should do so, however, in a manner that protects the confidentiality of school lunch data, as provided for in the Richard B. Russell National School Lunch Act (NSLA). They should establish procedures that allow release of information on school lunch eligibility only to officials who need that information for proper administration and enforcement of the school choice program and should include safeguards to protect family privacy.

Section 9 of the NSLA establishes requirements and limitations regarding the release of information about children certified for free and reduced price meals provided under the National School Lunch Program. The NSLA allows school officials responsible for determining free and reduced price meal eligibility to disclose *aggregate* information about children certified for free and reduced price school meals. Additionally, the statute permits determining officials to disclose *the names of individual children* certified for free and reduced price school meals and the child's eligibility status (whether certified for free meals or reduced price meals) to persons directly connected with the administration or enforcement of a federal or state education program.

Because choice is a federal and state education requirement, determining officials may disclose a child's eligibility status to persons directly connected with, and who have a need to know, a child's free and reduced price meal eligibility status in order to administer the choice requirements. The statute, however, does not allow the disclosure of any other information obtained from the free and reduced price school meal application or obtained through direct certification. School officials must keep in mind that the intent of the confidentiality provisions in the NSLA is to limit the disclosure of a child's eligibility status to those who have a "need to know" for proper administration and enforcement of a federal education program. As such, schools should establish procedures that limit access to a child's eligibility status to as few individuals as possible.

School officials, prior to their disclosing individual information on the School Lunch Program eligibility of individual students, must enter into a memorandum of understanding or other agreement to which all involved parties (including both school lunch administrators and educational officials) would adhere. This agreement must specify the individuals who would have access to the information, how the

information would be used in implementing state and federal choice requirements, and how the information would be protected from unauthorized uses and third-party disclosures, as well as including a statement of the penalties for misuse or improper disclosure of the information.

Additional information on this issue is provided in a December 17, 2002 letter from the U.S. Department of Education and Agriculture – Limited Disclosure for Title I available on the Child Nutrition Website at <a href="http://www.sde.state.id.us/child/cnp-regulations.asp#Free">http://www.sde.state.id.us/child/cnp-regulations.asp#Free</a>

# C-6. How may LEAs and LEA charter schools that operate school lunch programs under Provisions 2 and 3 of the National School Lunch Act determine which students are from low-income families and thus may be eligible for the priority?

"Provision 2" and "Provision 3" allow schools that offer students lunches at no charge, regardless of the students' economic status, to certify students as eligible for free or reduced price lunches once every four years and longer, under certain conditions. National School Lunch Program regulations prohibit schools that make use of these alternatives from collecting eligibility data and certifying students on an annual basis for other purposes.

For the purpose of identifying students as eligible for the priority for public school choice under Title I, school officials may deem all students enrolled in Provision 2 and Provision 3 schools as "low-income."

For additional information on this issue is provided in a December 17, 2002 letter from the U.S. Department of Education and Agriculture – Limited Disclosure for Title I available on the Child Nutrition Website at <a href="http://www.sde.state.id.us/child/cnp-regulations.asp#Free">http://www.sde.state.id.us/child/cnp-regulations.asp#Free</a>

## C-7. How does an LEA or LEA charter school determine which students are "lowest achieving"?

LEAs and LEA charter schools have flexibility in determining which students from low-income families are lowest achieving and thus must be given a priority for public school choice when it is necessary to distinguish among students for first choice of transfer or for eligibility to receive supplemental services through the Title I program.

To determine eligibility students might be rank-ordered, based on their achievement levels as determined using objective educational measures, such as scores from the Idaho Standards Achievement Tests used to determine Adequate Yearly Progress. Students may not be rank-ordered by family income level, because this method would not give priority to the lowest-achieving educational students.

Alternatively, the LEA and LEA charter school might provide priority for first-choice of transfer options or eligibility for supplemental services to students who receive less

than a certain score on state assessments (for instance, all those who score "below basic" in reading or mathematics) to change schools. This method could be used to focus attention on subject areas where the school or LEA and LEA charter school did not meet state AYP goals. Another option might be to base the determination on student grades, or on the scores students receive on other tests.

## C-8. What if a particular student attends a school that has been identified for improvement, but has been assigned to that school by a court order or for disciplinary reasons?

Although this issue is difficult to answer in general terms, because it is dependent upon the particular circumstances surrounding a student's placement (and can and should be resolved on a case-by-case basis), some general guidelines may be helpful.

If a student is assigned to a particular school by a family court for child custody reasons and that school has been identified for improvement, the student could be eligible to transfer under the choice provisions. However, the student's parent may not be able to exercise that option without first obtaining permission from the court to move his or her child.

Similarly, a student may be assigned to a particular school -- e.g., an alternative school -- by a juvenile court due to the student's violent or criminal behavior or for disciplinary reasons sufficiently serious to justify placement in a particular learning environment. In this circumstance, the LEA or LEA charter school would likely need to limit or deny the choice option.

### **D. NOTIFICATION OF PARENTS**

## D-1. When should parents be notified that their children are eligible for public school choice?

The LEA or LEA charter school should notify parents as soon as practicable prior to the beginning of the school year or school term in which choice will be offered

## D-2. How must an LEA or LEA charter schools notify parents that their children are eligible for public school choice?

An LEA or LEA charter school must provide an explanation of the choice option to all parents of students enrolled in the public schools that have been identified for school improvement, corrective action, or restructuring. This notification must be in a comprehensive, easy-to-understand format and, to the extent practicable, in a language the parents can understand. At a minimum, this notification must:

- 1. Inform parents that their child is eligible to attend another public school due to the identification of the current school as in need of improvement;
- 2. Identify each public school, which may include charter schools, that the parent can select:

3. Include information on the academic achievement of the schools that the parent may select [Federal law: 34 C.F.R. 200.37(b)(4)].

The LEA or LEA charter school should also include an explanation of why the choices made available to parents may have been limited.

In addition to mailing notices directly to parents, the LEA or LEA charter school must provide information about choice options through broader means, including newspapers, posters, and the Internet.

### D-3. How much time should parents have to consider their options?

An LEA or LEA charter school might set different timelines for parents to make their decisions on choice, depending on the circumstances in the LEA or LEA charter school.

For example, the LEA or LEA charter school might permit parents to exercise choice at various times during the school year (e.g., in the spring of the prior school year, at the beginning of the school year, and at the beginning of the second semester). Alternatively, the LEA or LEA charter school may establish a "window" during which parents must exercise their choice option.

Whatever the case, the LEA or LEA charter school must set a reasonable deadline by which parents must apply and ensure that the parents have sufficient time and information to make an informed decision about selecting a school. The LEA and LEA charter school should work with parents to ensure that they have ample information and time to take advantage of the opportunity to choose a different public school for their child.

## D-4. What procedures should LEAs and LEA charters establish for enabling parents to communicate their choice of school?

An LEA or LEA charter school should ensure that its policies for receiving choice-related communications from parents do not impede parents' opportunities to exercise choice options. For example, parents should not have to appear in person to state their choices. Rather, parents should be able to communicate their choices in a variety of ways, including by standard mail, email, or fax. The LEA or LEA charter school should confirm with parents that it has received their communication regarding choice.

#### D-5. If there are no schools to which students can transfer, must parents still be notified?

Yes, parents must be notified that their child's school is identified for improvement and what options may or may not be available for children in the school.

### E. SCHOOLS OF CHOICE

### E-1. Which schools may be offered to students as transfer options?

Except in the situations described in items E-8 and E-11, students must be given the option to transfer to other better performing public schools, which may be charter schools, within the LEA. For options outside the LEA see item E-10.

The choices made available to students may not include schools identified for improvement (or corrective action or restructuring) for not making Adequate Yearly Progress goals. Charter schools that fall within the boundaries of an LEA, but are not authorized by the LEA, may also be included as transfer options, in coordination and with the agreement of the individual charter school.

## E-2. May a "virtual school" (a school that offers instruction through distance learning technology) be among the schools to which eligible students are offered the opportunity to transfer?

Yes, so long as that school is an accredited public elementary or secondary school (as defined in state law) and has not been identified for school improvement, corrective action, or restructuring. If the "virtual school" is not operated by the LEA or LEA charter school, the LEA or LEA charter school could enter into a cooperative agreement with the school so that its students can enroll.

## E-3. How many choices of schools is an LEA or LEA charter school required to offer to students?

If more than one school that meets the requirements outlined in item E-1 is available, the LEA must offer more than one choice to eligible students. LEAs and LEA charter schools should strive to provide a full menu of choices to students and parents, and must take into account parents' preferences among the choices offered [Federal law: 34 C.F.R. Section 200(a)(4)(ii)].

## E-4. May specialty schools, such as schools for the performing arts, be offered to students as transfer options?

Yes. However, LEAs or LEA charter schools do not need to disregard entrance requirements when identifying transfer options for students. For example, an LEA may require students wishing to transfer to a fine arts specialty school or to a school for gifted students to meet the normal eligibility requirements for those schools, even if there are no other choices available to eligible students in the district.

## E-5. When an LEA or LEA charter school offers parents multiple choices of schools, who makes the final decision on which school a child attends, and how is it made?

While the final decision on the school each child will attend is up to the LEA or LEA charter school, and while not all parents will necessarily receive their first choice of school, LEAs and LEA charter schools must take parents' preferences into consideration in making these decisions.

In addition, in making final decisions on assignments, LEAs and LEA charter schools must give priority to the lowest-achieving eligible children. LEAs and LEA charter schools might allow parents to rank-order their preferences among the schools that are available to receive transfer students. LEAs and LEA charter schools should respect those preferences, to the extent practicable, when assigning students to schools

Once an LEA or LEA charter school has made its decision, parents must have the option to decline the opportunity to move their child to the new school identified by the LEA or LEA charter school. If the child's current school is subject to both the public school choice and supplemental educational services requirements, some parents, once they understand the transfer options, might elect to have their eligible child remain in his or her original school and receive supplemental educational services.

# E-6. Must an LEA or LEA charter school that believes it does not have the physical capacity within its schools to accept transferring students implement the public school choice provisions?

An LEA or LEA charter may not use lack of capacity to deny students the option to transfer but may take capacity into consideration in deciding which choices to make available to eligible students.

The bottom line, then, is that every student enrolled in a public school in improvement who wishes to transfer to a school that is not in need of improvement must have that opportunity, but may not be able to exercise choice due to available options within and without the district. Moreover, LEAs and LEA charter school provision to allow priority to be given to the lowest-achieving eligible children (as described in Items C-3 and C-7) does not diminish the requirement for the LEA to provide choice to *all* students in public schools that are in school improvement status.

Thus, if an LEA or LEA charter school does not have sufficient capacity in its schools that are not identified for improvement to accommodate the demand for transfers by all eligible students, the LEA or LEA charter school must create additional capacity or provide choices of other schools.

## E-7. If an LEA or LEA charter school does not have the physical capacity to offer transfers to all eligible students, how can it create additional capacity?

When capacity is an issue, school officials will need to employ creativity and ingenuity in creating capacity in schools to receive additional students. The range of possible options might include:

- Reconfiguring space in receiving schools that is currently not being used for instruction;
- Expanding space in receiving schools, such as by reallocating portable classrooms within the district:
- Redrawing the district's attendance zones, if insufficient capacity is available
  within the existing zones within which students would ordinarily select
  schools;
- Creating satellite divisions of receiving schools, that is, classrooms that are
  under the supervision of the receiving school principal and whose teachers are
  part of the school faculty but that exist in neighboring buildings;
- Creating new, distinct schools, with separate faculty, within the physical sites of schools identified for improvement;
- Encouraging the creation of new charter schools within the district;
- Developing distance learning programs, or entering into cooperative agreements with "virtual schools";
- Reshaping long-range capital construction and renovation plans in order to ensure that schools that are likely to receive new students have additional space;
- Modifying either the school calendar or the school day, such as through "shift" or "track" scheduling, in order to expand capacity; and
- Easing capacity by initiating inter-district choice programs with neighboring LEAs or LEA charter schools.

### E-8. What if existing local transfer policies prohibit school choice?

The federal and state law and requirements supersede local school board policies that limit school choice and are inconsistent with the requirement to provide the option to transfer to all students enrolled in schools identified for improvement, corrective action, or restructuring.

#### E-9. What if choice might create health or safety problems?

As indicated in the answers to earlier questions, LEAs and LEA charter schools have broad latitude in determining which transfer options to offer for parental consideration. They may consider health and safety factors in determining the transfer options. However, as indicated in the answer to question E-7, lack of capacity and health and safety concerns -- including overcrowding problems -- do not excuse an LEA or LEA charter school from meeting the public school choice requirement. The expectation is that an LEA or LEA charter school will need to find ways to provide choice, consistent with its obligations to provide a healthy and safe learning environment. Some of the options described in item E-7 may be useful to LEAs or LEA charter school in resolving health and safety issues.

### E-10. May an LEA or LEA charter school provide eligible students with an option to transfer to schools outside of the district?

Yes. In fact, the federal law states that if all public schools within an LEA and LEA charter school to which a child may transfer are identified for school improvement, corrective action, or restructuring, the LEA or LEA charter school must, to the extent practicable, establish a cooperative agreement with other LEAs or LEA charter schools in the area that are willing to accept its students as transfers. addition, LEAs and LEA charter schools that are not in this situation may want to include interdistrict transfers in their plans, in order to broaden the range of student choices or mitigate capacity concerns in the district, or both.

## E-11. What if providing the option to transfer to another school within the district is not possible?

Some LEAs and LEA charter schools may have no schools available to which students can transfer. This situation might occur when all schools at a grade level are in school improvement or when the LEA has only a single school at that grade level. Transfer between LEAs also may not be possible when an LEA's schools are so remote from one another that choice is impracticable. For example, if the only other elementary school is over 100 miles away, then choice is likely impracticable. On the other hand, if other potential elementary school choices are located outside an LEA-defined attendance zone or internal boundary, these boundaries may not be used to prevent student transfers.

In these cases, the LEA and LEA charter school must, to the extent practicable, enter into cooperative agreements with other LEAs in the area (or with charter and "virtual schools" in the State) that can accept its students as transfers [Federal law: Section 1116(b)(11)].

The LEA or LEA charter school receiving Title I funds may also wish to offer supplemental services to students attending schools in their first year of improvement who cannot be given the opportunity to change schools [Federal law: 34 C.F.R. Section 200.44(h)(2)].

### F. SPECIAL EDUCATION AND CHOICE

## F-1. What are the responsibilities of the school that receives transfer students with disabilities?

LEAs and LEA charter school must ensure that students with disabilities are provided a free appropriate public education (FAPE) consistent with the Individuals with Disabilities Education Act (IDEA), Section 504 of the Rehabilitation Act of 1973 (Section 504), and Title II of the Americans with Disabilities Act (ADA Title II) in their schools of cho(IEP) or Section 504 plan (for students eligible only under Section 504 and Title II) developed by the prior school, or to convene an IEP team meeting and develop a new IEP in consultation with the parents that meets the student's needs (or, for the Section 504/Title II-only eligible student, determine the regular and special education and related aids and services necessary to meet the student's needs).

Prior to the parents making a final decision on transferring their child to a new school, LEAs and LEA charter school should encourage them to discuss their child's specific needs with the prospective school's staff and visit the prospective school so that the parents are aware of the differences in school size, curriculum, faculty, and other factors that that may affect the ways in which the school will provide a free appropriate education to their child. In addition, LEAs and LEA charter schools must ensure that schools comply with the other provisions of Section 504 and the ADA, including accessibility provisions [Federal law: 34 C.F.R. Section 200.44(j)].

### F-2. What should parents be aware of in transferring their student?

Students with disabilities have special and specific needs. Along with the information suggested in D-3, parents should discuss their child's specific educational and developmental needs with, and visit, the prospective school, so that every parent is aware of the school environment and its mission. While every student with a disability must be provided FAPE consistent with the IDEA, Section 504 and ADA Title II, the implementation and delivery of a free appropriate public education do not have to be identical at each school. When a parent chooses to transfer a child to a different school and prepares to develop or amend an IEP, the parent must recognize that there are different ways to address the needs of their child.

## F-3. Must students with disabilities be offered their choice of the same schools as nondisabled students?

School districts must offer students with disabilities and those eligible under Section 504 the opportunity to be educated in a school that has not been identified as in need of school improvement and has not been identified by the State as persistently dangerous, if nondisabled students have that opportunity.

However, an LEA and LEA charter school is not required to offer students with disabilities the same choices of schools as it offers to nondisabled students. In

determining the choices available to such students, the LEA should match the abilities and needs of a student with disabilities with those schools that have the ability to provide the student FAPE.

## F-4. Does the movement of a student with disabilities to a school of choice constitute a "change of placement" under the IDEA?

A change in the location of delivery of services, in and of itself, does not constitute a "change of placement" as defined under the IDEA. The IDEA statute and implementing regulations contain specific requirements regarding "change of placement" provisions, and LEAs and LEA charter schools must comply with these requirements when they are triggered.

### G. CIVIL RIGHTS ISSUES

## G-1. How do Federal civil rights laws apply to LEAs and LEA charter schools implementing public school choice?

In providing public school choice, an LEA and LEA charter schools may not discriminate on the basis of race, color, national origin, sex, disability, or age, consistent with Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, ADA Title II, and the Age Discrimination Act of 1975.

See section F concerning the implementation of the public school choice requirements for students with disabilities.

### H. Responsibilities of Schools Receiving Transfer Students

## H-1. What are the responsibilities of a school that receives transfer students under this program?

A school that receives students under this program must ensure that transferring students are enrolled in classes and other activities in the school in the same manner as all other students in the school [Federal law: Section 1116(b)(1)(F)]. For instance, students entering a school as a result of the choice provisions must have the same opportunity to select courses, to take part in special programs (such as activities for gifted and talented students), and to participate in extracurricular activities as all other students enrolled in the school.

## H-2. May districts prohibit students transferring from a school identified for improvement the opportunity to participate in interscholastic sports in their new school?

If a district has a general policy that requires all students who transfer under any other choice option within the district to "sit out" from interscholastic sports for a specified period of time after the transfer, then the district may apply that policy to students

who transfer under the choice option. If it does not have such a general policy, it may not impose one on students who enter the school under the choice provisions. Policies promulgated by the Idaho High School Activities Association should be applied in the same way.

#### I. GENERAL FUNDING REQUIREMENTS

I-1. Are there any requirements as to how general educational services for transfer students are to be funded by the LEA or LEA charter school?

No. Federal and state statute and regulations do not require that any local, state, or federal funds "follow the child" to his or her new school. However, LEAs and LEA charter schools should take care to ensure that receiving schools have available the staff, materials, equipment, and other resources needed to accommodate the students who enter the school through the exercise of the choice option.

I-2. If a child transfers out of her or his original school, should an LEA or LEA charter school include that child (1) in the count of children used to determine the Title I allocation to the school of residence, or (2) in the count used to determine the Title I allocation to the school of enrollment?

Generally, Title I school eligibility and Title I allocations are based on the count of poor children who reside in the school attendance zone of a given school [Federal law: Section 1113]. Consistent with this general rule, an LEA and LEA charter school would include a transferring child as part of the count of the school of residence. However, LEAs and LEA charter schools also have the option of using enrollment as the basis for determining Title I eligibility and allocations [Federal law: Section 1113(b)(1)(B)]. In the case of an LEA and LEA charter school that uses enrollment, the transferring student would be counted in the school in which the student is enrolled (the receiving school).

I-3. May Title I funds be used to benefit non-Title I schools that receive students transferring from Title I schools identified for improvement?

As a general rule, Title I dollars and services do not follow a child who transfers from a Title I school identified for improvement to a non-Title I school. However, in subsequent school years, the receiving school may become eligible for Title I funds if a sufficient number of low-income students transfer into it (if the LEA or LEA charter school bases its eligibility determinations on enrollment). If the number of students transferring into a receiving school causes that school to be designated as a Title I school, then it will receive Title I funds.

I-4. Does special education funding follow a child with disabilities to the school of his or her choice?

Federal special education funding is distributed to school districts, not individual schools. It is up to the school district to determine how that money is spent and how those funds are distributed among individual schools within the district.

#### J. TRANSPORTATION FUNDING AND OTHER TRANSPORTATION ISSUES

### J-1. Is an LEA or LEA charter school required to provide transportation to schools of choice?

Yes, an LEA or LEA charter school must pay for or provide transportation to the new school

## J-2. What funds may be used by an LEA or LEA charter school to pay for choice-related transportation?

The LEA and LEA charter school may claim the transportation costs for 85 percent reimbursement under the state's pupil transportation program. An LEA may use Title I funds, as well as other allowable federal, state, local, and private resources, to pay for non-reimbursed portions of the transportation costs.

## J-3. How much must an LEA or LEA charter school pay to provide choice-related transportation?

The amount of federal Title I funds available for non reimbursed choice-related transportation is limited.

Federal law establishes a joint funding mechanism for choice-related transportation and supplemental educational services [Federal law: Section 1116(b)(10)]. Unless a lesser amount is needed to meet demand for choice-related transportation and to satisfy all requests for supplemental educational services, an LEA must spend an amount equal to 20 percent of its Title I, Part A allocation, before any reservations, on:

- 1. Choice-related transportation;
- 2. Supplemental educational services; or
- 3. A combination of (1) and (2).

Moreover, the 20 percent must be calculated before the LEA or LEA charter school takes any reservations "off the top" of its Title I, Part A allocation for parental involvement, private school equitable participation, or other purposes.

This flexible funding approach means that the amount of funding that an LEA or LEA charter school must devote to choice-related transportation depends in part on how much it spends on supplemental educational services. However, if the cost of satisfying all requests for supplemental educational services exceeds 5 percent of an LEA or LEA charter school Title I, Part A allocation, the LEA or LEA charter school may not spend less than an amount equal to 5 percent on those services. Similarly, if the demand from parents of eligible students for transportation needed for choice

exceeds 5 percent of the allocation, the LEA or LEA charter school must spend the equivalent of at least 5 percent on transportation. The LEA or LEA charter school has flexibility in allocating the remaining 10 percent between choice-related transportation and supplemental educational services, and in doing so should take into consideration the level of parental demand and the costs of meeting that demand [34 C.F.R. Section 200.48(a)].

An LEA or LEA charter school may, but is not required to, spend an amount exceeding 20 percent of its Title I, Part A allocation if additional funds are needed to meet all demands for choice-related transportation and supplemental educational services. A school district could also spend State or local funds, if it wishes, to assist in paying for transportation.

## J-7. Must an LEA or LEA charter school reserve a portion of its Title I allocation to pay for choice- related transportation?

No. The statutory phrase "an amount equal to" means that the funds required to pay the costs of choice-related transportation and supplemental educational services need not come from Title I allocations, but may be provided from Title I allocations or from other allowable Federal, State, local, or private sources. (See also item J-8.)

For example, if an LEA or State already operates transportation services, the LEA may be able to provide the transportation required by the Title I school choice provision through its existing transportation program. In such a case, the LEA may count, toward the 20 percent requirement, the portion of its transportation costs that is attributable to providing choice to students exercising the Title I choice option.

## J-8. What other Federal program dollars may be used to pay for choice-related transportation?

LEAs and LEA charter schools may use their Title V, Part A Local Innovative Education Program funds to pay for choice-related transportation. LEAs and LEA charter schools also may use funds transferred to Title I or Title V from other federal education programs under the ESEA Section 6123 "transferability" authority to pay such costs.

Programs under which such transfers may be made include Title II, Part A (Improving Teacher Quality State Grants); Title II, Part D (Educational Technology State Grants); and Title IV, Part A (Safe and Drug-Free Schools and Communities State Grants). Funding from Title V, Part A (State Grants for Innovative Programs) can also be transferred to Title I.

An LEA or LEA charter school receiving a discretionary grant from its state under Title V, section 5121(3) and using that grant in accordance with section 5131(a)(12) may also be able to use grant funds to pay for choice-related transportation, depending on the terms of the grant award.

An LEA or LEA charter school must include any funds transferred into Title I, Part A (under section 6123) in the base used in calculating the "amount equal to 20 percent" of its Title I allocation, to determine required expenditures for choice-related transportation and supplemental educational services.

J-11. The state only provides transportation reimbursement for students living a mile and a half from the school or those students within that distance that have been approved for safety busing services, would the LEA or LEA charter school have to provide transportation to students who elect, under the school choice provisions, to transfer to schools that are within that distance of their homes?

No. In that situation, the LEA or LEA charter school would not be required to provide for transportation to students who elect, under the Title I provisions, to transfer to schools within a mile and half of their homes.

## J-12. May an LEA or LEA charter school establish transportation zones within an LEA based on the geographic location of schools?

Yes, an LEA has latitude in deciding which options to provide for eligible students. For example, it might establish transportation zones based upon geographic location and fully fund transportation to different schools within a zone. This option would allow the district to offer more than one choice of school while ensuring that transportation can be reasonably provided or arranged.

Outside the transportation zone, the district could decide to pay for only part of the transportation to the school. Parents might select a school outside of their designated attendance zone, but they would be informed prior to making this decision that they may be responsible for providing or arranging transportation for their children.

If transportation zones are developed, they should be drawn to provide genuine choice and address only issues of geographic distance. LEAs should ensure that there is sufficient capacity to accommodate the demand for choice within each zone. If this cannot be done, students must be given the opportunity to attend schools outside their zone of residence and provided with transportation.

## J-13. Does the Title I "supplement, not supplant" requirement apply to transportation funds?

Yes. Title I funds may be used only to supplement the level of funds that, in the absence of the Title I funds, would be made available from non-Federal sources for the transportation of children. For example, if an LEA is required by State or local law to provide transportation to students who choose to transfer to another school under an existing choice plan, it may not use Title I funds to supplant the State or local funds that it otherwise would use to provide transportation, even though transportation costs generally are an allowable use of Title I funds.

### DRAFT

Attachment A.2.

### Appendix A

### **DEFINITIONS**

Adequate Yearly Progress: Adequate yearly progress (AYP) is the measure of the extent to which students in a school, taken as a whole and certain groups within the school, demonstrate proficiency in at least reading/language arts and mathematics. It also measures the progress of schools under other academic indicators, such as the graduation or school attendance rate. The same provisions also apply to LEAs and LEA charter schools. AYP reflects the objective of all students demonstrating proficiency by the end of school year 2013-2014. [Section 1111(b)(2) & State Board of Education Administrative Rule Governing Thoroughness: 08.02.03.114.01-06.]

**Corrective Action**: A school identified for corrective action is a any public school in Idaho that has not made AYP for four years [Section 1116(b)(7) & State Board of Education Administrative Rule Governing Thoroughness: 08.02.03.114.01-06.

**Eligible Student**: For the purposes of the school choice provision in Idaho, eligible students are all students enrolled in Idaho public schools that are in their first or second year of school improvement or are in corrective action or restructuring status [Title I, section 1116(b)(1)(E) & State Board of Education Administrative Rule Governing Thoroughness: 08.02.03.114.01-06.]

**Restructuring**: A school identified for restructuring is a school that has not made AYP for five years [Section 1116(b)(8)] & State Board of Education Administrative Rule Governing Thoroughness: 08.02.03.114.01-06.] The first year of restructuring may be used for planning; the plan for the reconstituted school must be implemented no later than the second year.

**School improvement:** A school is in its first year of "school improvement" when it has not made AYP for two consecutive years. In order to exit school improvement status, it must make AYP for two consecutive years. A school can be identified for a second year of school improvement if it does not make AYP for another year, after initially being identified as in need of improvement [Section 1116(b)(1)(A)] & State Board of Education Rules *State Board of Education Administrative Rule Governing Thoroughness:* 08.02.03.114.01-06.]

### Appendix B

### **ABBREVIATIONS**

ADA Americans with Disabilities Act

AYP Adequate Yearly Progress

ESEA Elementary and Secondary Education Act of 1965

FAPE Free Appropriate Public Education

IDEA Individuals with Disabilities Education Act

LEA Local Educational Agency

NCLB No Child Left Behind Act of 2001

### DRAFT

Attachment A.2.